

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 7165

BILL NUMBER: SB 450

DATE PREPARED: Jan 5, 2002

BILL AMENDED:

SUBJECT: Death Penalty.

FISCAL ANALYST: Mark Goodpaster

PHONE NUMBER: 232-9852

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (A) It provides that the state may present evidence of a defendant's criminal history during the penalty phase of the defendant's trial.
- (B) It prohibits a court from overruling a jury's recommendation that a defendant not receive the death penalty.
- (C) It provides that a defendant who kills a person who has a restraining order against the defendant may receive the death penalty.

Effective Date: July 1, 2002.

Explanation of State Expenditures: *Background:* There are three general stages of review of criminal cases at the state and federal level: direct appeal and post conviction relief at the state level and habeas corpus at the federal level. The Office of the Attorney General represents the state in all three stages of review in death penalty cases, and in direct appeal and habeas corpus if a determinate sentence is imposed. The Office of the State Public Defender represents convicted offenders requesting indigent counsel in post conviction relief.

For the Office of the State Public Defender, the estimated staff costs are \$191,182 for a death penalty case, while the staff costs for a case involving life without parole is an estimated \$3,724. For the Office of the Attorney General, the staff costs are \$72,503 for a death penalty case and \$12,004 for a case involving life without parole. Besides the staff costs for legal representation, both the Department of Correction (DOC) and the Indiana State Police generally incur added overtime costs for providing security in death penalty cases around the time of the execution.

The costs to the Department of Correction would be greater if an offender is housed in DOC facilities for a determinate sentence of between 45 and 65 years than if an offender is executed.

Analysis: The costs to the State General Fund depend on the type of sentence that is imposed. When the death penalty is imposed on a defendant, then the staff costs to the Office of the Attorney General and the State Public Defender's Office and reimbursement from the Public Defense Fund will be higher, but the length of stay in DOC facilities will be shorter. By contrast, when either a sentence of life without parole or a term of years is imposed, then the length of stay in DOC facilities will be longer, but the staff costs for the Office of the Attorney General and the State Public Defender and reimbursements from the State Public Defender Fund will be lower.

LSA staff compared the costs to the state of each sentencing option for a hypothetical 30-year-old offender. (The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.) Staff assumed an offender would spend an average period of 11 years on death row before being executed if the death penalty was imposed and 32.5 years if an offender is sentenced to 65 years in prison. (Most offenders reduce their sentences by one day for each day that they comply with prison facility codes of behavior.) Offenders sentenced to life without parole would remain in DOC facilities until the age of 77. Because these costs occur at different points in time, a net present value was prepared for each cost stream assuming an annual inflation rate of 5.2%. The following table presents these costs.

Costs to the State of Sentencing Options for a 30-Year-Old Offender Sentenced for Aggravated Murder	
<u>Sentence</u>	<u>Net Present Value</u>
Death Penalty	\$510,158
Life Without Parole	\$489,012
65 Years with 50% Credit Time	\$430,367

Explanation of State Revenues:

Explanation of Local Expenditures: Provision A: Depending on the type of evidence that is presented, more defendants could receive a death sentence. The Indiana Supreme Court Administrator monitors death penalty cases pursuant to Rule 24 of the Indiana Rules of Criminal Procedure. As of December 2001, staff report that 16 defendants are either awaiting or are currently on trial where the death penalty was requested by the prosecuting attorney.

Provision B: Between 1981 and 1994, ten cases have been reported in which the judge has overridden the jury's decision to not impose the death penalty on a defendant. This provision would not allow these jury decisions to be overturned.

Provision C would allow the prosecuting attorney of a county to request either life without parole or the death penalty against a person who commits murder when a restraining order has been violated. Under current law, the prosecuting attorney would not be able to request either the death penalty or life without parole unless one of 16 aggravating circumstances could be cited when a murder occurred.

Background: Of the three possible sentencing options for murder, the death penalty is generally the most expensive for trial courts to conduct because two attorneys are required to represent the accused, and a bifurcated trial is conducted to determine guilt or innocence and whether a sentence of death is warranted. Life without parole is the next most expensive option because, while two attorneys are not required for legal

representation, a bifurcated trial is also required to determine guilt or innocence and then whether a sentence of life without parole is warranted. Determinate sentencing of between 45 and 65 years is the least expensive option because one trial is conducted and two attorneys are not required to represent the defendant.

The following table summarizes the difference between these three options:

<u>Sentencing Option</u>	<u>Number of Defense Attorneys Needed</u>	<u>Type of Trial Conducted</u>
Death Penalty	Two	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Life Without Parole	One	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Determinate Sentence Between 45 and 65 Years	One	A single trial to determine guilt or innocence; a sentencing hearing is separate.

Consequently, the costs of legal representation for a case where the most serious sentence is between 45 and 65 years would likely be lower than the costs of a case involving life without parole.

No information is available on the costs of murder cases in which the most serious sentence was between 45 and 65 years of incarceration. However, at the request of the Criminal Law Study Commission, Legislative Services Agency staff compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a “typical” death penalty trial and a trial where life without parole is the most serious sentence.

Cost Components for Murder Trials:		
	<u>Death Penalty</u>	<u>Life Without Parole</u>
Attorneys and Related Costs*	\$107,804	\$27,370
Jury and Related Costs	\$46,375	\$10,150
Cost of Appeals	\$54,355	\$5,466
Prosecuting Attorney	\$2,340	\$2,948
County Sheriff	\$8,472	\$4,380
Total Costs	\$219,346	\$50,314
*Net Costs After Reimbursement From Public Defense Fund		

The cost of legal representation for a criminal defendant in a death penalty is four times as expensive as the costs of a criminal trial in which the most serious sentence is life without parole. The costs of a trial where a determinate sentence is the most serious sentence is likely to be less than the costs of a trial in which life without parole is the most serious sentence.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction, Office of the Attorney General, Office of the State

Public Defender, State Police.

Local Agencies Affected: Trial Courts, County Sheriff.

Information Sources: Indiana Supreme Court; *The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission* (draft copy); Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>